IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WP(Crl.).No. 194 of 2007(S)

PETITIONER:

SHEEJA,W/O. THADATHIL KUNJU @ THOMAS,
THADATHIL HOUSE,PADIYOOR AMSOM,
POOVAM, KANNUR DISTRICT.

BY ADV. SRI.BLAZE K.JOSE
SRI.K.K.SUNIL KUMAR (IDUKKI)

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

2. DISTRICT MAGISTRATE AND
DISTRICT COLLECTOR, KANNUR DISTRICT.

3. THE SUPERINTENDENT,
CENTRAL PRISON, KANNUR.

BY GOVERNMENT PLEADER SRI K. RAVEENDRANATH.

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 6-11-2007, THE COURT ON 21-11-2007, DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: A TRUE COPY OF THE ORDER OF DETENTION NO.SSI 25814/07 DATED 3-7-07 OF THE 2ND RESPONDNET.

EXT.P2: A TRUE COPY OF THE GROUNDS FORMING THE BASIS OF DETENTION WERE SERVED ON THE DETENU

EXT.P3: A TRUE COPY OF THE REPRESENTATON SUBMITTED BY THE DETENU

EXT.P4: A TRUE COPY OF THE COMPAINT SUBMITTED BEFORE THE HUMAN RIGHTS COMMISSION DATED 12-5-2007.

//TRUE COPY//

P.R.RAMAN & V.K.MOHANAN,JJ

W.P.(CRL.) 194 OF 2007

Dated..... 2007.

JUDGMENT

Mohanan, J.

Challenging the legal validity of the detention order No.SSI 25814/2007 dated 3-7-2007 and to quash the same by issuing a writ of certiorari and also with a prayer to issue a writ of habeas corpus commanding the 3rd respondent to set at liberty the detenu, namely, Thadathil Kunju @ Thomas, this petition is filed under Article 226 of the Constitution of India by one Sheeja who is the wife of the said detenu.

2. The averments and allegations contained in the above writ petition are as follows:

3. The detention order is produced as Ext.P1 and Ext. P2 is the ground on the basis of which the detenu was taken into custody by the Asst. Sub Inspector of Police, Irikkoor Police Station on 3-7-2007. According to the petitioner, Ext.P3 representation preferred before the 3rd respondent under Article 22(5) of the Constitution of India so as to place

the same before the Advisory Board and the same is pending before the Advisory Board and not disposed of so far. The further contention is that the 2nd respondent who is the authorised officer has not reported the fact of arrest and detention to the Government and the Director General of Police and the Government has not so far confirmed the detention order within 10 days and therefore the continued detention will amount to illegal confinement and hence, the detenu is entitled to be released forthwith. It is further averred in the writ petition that almost all the cases mentioned in the order are false and baseless. Many of the cases are registered on the basis of false complaint of the persons those who are inimical to the detenu. It is also stated that the 2nd respondent has miserably failed in applying his mind and came into an erroneous conclusion so as to invoke the provisions of the Kerala Anti-Social Activities (Prevention) Ordinance, 2007 (hereinafter referred to for short `the Ordinance' only). Thus according to the petitioner, there is no material to come into a conclusion that the detenu

is a "known goonda" or "known rowdy" as contemplated by the Ordinance. It is also averred that the detenu is eking livelihood by doing agricultural work in the property taken on lease and the income from that agricultural operation is the only means for their livelihood and the detenu had underwent major brain surgery for removal of tumor and even now he is taking medicine and required proper treatment and attention. On the basis of the above facts it is submitted that the detenu is not likely to be involved in criminal activities and therefore there is no scope for invoking the provisions of the Ordinance to detain the petitioner's husband in prison. Hence, the arrest and detention of the petitioner's husband will amount to gross violation of the provisions of the constitution of India and therefore prayed for an urgent order of release of the husband of the petitioner.

4. Controverting the averments contained in the writ petition, separate counter affidavits have been filed by both the 2nd respondent as well as Ist respondent. In the counter affidavit filed by the 2nd respondent it is stated that the 2nd

respondent has received credible information from the Station House Officer, Irikkoor police station through the Superintendent of Police, Kannur against the detenu. The said report contained informations about the involvement of Thadathil Kunju alias Thomas in 5 criminal cases. The details of those 5 criminal cases are mentioned in the counter affidavit. The 2nd respondent has further stated that on examination and evaluation of the report and information received through the Superintendent of Police and the connected records, he had satisfied that the detenu is a "known rowdy" as defined in the Ordinance and that if he remains at large, he would indulge in anti-social activities which would directly or indirectly cause harm, danger or alarm or a feeling of insecurity or cause threat to public of Kannur or result in grave or widespread danger to life in Kannur. Thus according to the 2nd respondent, by exercising the power under section 3(1) and 3(2) of the Ordinance, issued Ext.P1 detention order along with the grounds of detention. Accordingly, the Superintendent of Police was directed to take

the detenu into custody and to transfer him to the Central Jail, Kannur by complying all procedures prescribed for effecting arrest. Thus, the detenu was arrested by P.Sasidharan, A.S.I. of Police Irikkur police station on 3-7-2007 at 13.45 hours from Kannur near stadium ground after complying with all procedural formalities. At the time of arrest, the detention order and the grounds for detention were served on him for which there was proper acknowledgment and the detenu was taken to the central prison , Kannur and detained there at 6.30 p.m. on the date of arrest itself.

5. It is further submitted by the 2nd respondent in his counter affidavit that those facts were reported to the Additional Chief Secretary to Government, Home (SSA) Department and Director General of Police, Kerala together with copy of the order and supporting materials on 4-7-2007 and on receipt of the same on 5-7-2007, the Ist respondent has confirmed the detention as per order Ext.R2(a) No.47950/SSA4/07/Home dated 5-7-2007 and Ext.R2(a) confirmation order has been served on the detenu under

proper acknowledgment on 7-7-2007. It is further stated that the arrest and detention was made in accordance with the procedure and after the arrest, the same was timely communicated to higher authorities and the Government has issued Ext.R2(a) confirmation order and thus denied all the contrary allegations contained in the writ petition. According to the 2nd respondent, the detenu is involved in cases relating to the offences falling under Chapter XVI and XVII of IPC and those offences were committed within a period of 7 years as contemplated under section 2(p) of the Ordinance. It is specifically stated that in all those cases, investigations are over and those cases were charge sheeted and are pending for trial. In the counter affidavit, it is specifically stated by the 2nd respondent that the case in crime No.14/2007 was registered at the Irikkoor police station for the offences under sections 341, 506(i), 354 and 324 read with 34 of IPC against the detenu as per the complaint of one Rajamma in which the allegation was that the detenu caught hold of her and her daughter and outraged their modesty and assaulted them at

Padiyoor amsom, Poovam. In that case also, charge sheet was filed on 13-1-2007 after investigation. While denying the averments contained in paragraphs 8,10 and 11 of the Writ Petition, it is specifically stated that the representation filed before the 3rd respondent has already been transmitted to the Advisory Board and also stated that the Government has passed confirmation order. Thus, according to the 2nd respondent, in view of the the facts and circumstances involved in the case, the arrest and detention of the detenu is absolutely necessary and therefore, it is submitted that the petitioner is not entitled to get any relief from this Court in this writ petition.

6. In the separate counter affidavit filed for and on behalf of the Ist respondent, it is stated that Ext.P1 order passed by 2nd respondent was confirmed by the Government and the same was served on the detenu which was acknowledged by him putting his signature and affixing his thumb impression on it on 7-7-2007 and in proof of the above fact, Ext.R1(a) is produced. In paragraph 3 of the counter

affidavit filed on behalf of the Ist respondent it is stated that "in the said affidavit, in paragraph 7 thereof, the 2nd respondent has averred that the Ist respondent has confirmed the detention as per order No.47950/SS A4/2007/Home dated 5-7-2007" and has also produced a copy of the said order. However, the document thus produced is a copy of the confirmation order forwarded by the Government to the District Collector and therefore it does not contain the acknowledgment of the receipt of the same made by the detenu on the order". Thus by filing the affidavit on behalf of the Ist respondent and producing Ext.R1(a), the Ist respondent stated that the confirmation order issued by the government was properly served on the detenu and the same was accepted by him with proper endorsement thereon.

7. We have heard the counsel for the petitioner as well as the Special Government Pleader and the Laision officer.

8. During the course of the hearing, the learned counsel appearing for the petitioner sticking on the averments contained in the writ petition, strenuously argued that the

confirmation order now alleged to have been passed by the Government was not served on the detenu within the stipulated time i.e. within 10 days from the date of arrest. In the absence of a confirmation order passed by the Government, the detention after the completion of 10 days from the date of arrest, is illegal and hence, the further detention is liable to be set aside. In order to stress the above point, the counsel invited our attention to Article 22 (5) of the constitution of India. The above contention met by the learned Government Pleader by producing Ext.R2(a) document which shows that the Government has first issued Ext.R2(a) order on 5-7-2007 itself, i.e. within 2 days from the date of arrest of the detenu and therefore, confirmation order has already been issued within the period of 10 days contemplated by section 3 (3) of the Ordinance. It is further substantiated by producing Ext.R1(a) document wherein contained the thumb impression as well as signature of the detenu acknowledging the receipt of the above confirmation order. From the above documents, we are satisfied that the Government has passed the

confirmation order as contemplated by Section 3(3) of the Ordinance within the stipulated time and the copy of the said order had been served on the detenu as evidenced by Ext.R2 (a) document.

9. Another contention advanced by the counsel for the petitioner is that the documents relied on by the 2nd respondent were not served on the detenu and therefore, the order of detention and the continued detention are liable to be set aside. The Government Pleader, after pointing out the statement contained in the counter affidavit filed by the 2nd respondent, argued that all the cases, which relied on by the 2nd respondent while exercising her powers under the Ordinance, had been thoroughly investigated and after investigation, the final reports were filed by the police in all those cases and therefore there is no need to furnish those documents again. In the present case as admitted by the petitioner, Ext.P2 document which contained the grounds forming the basis of detention was served on the detenu at the time of making arrest. Ext.P2 disclosed the details of

the cases in which the detenu is involved. As pointed out earlier, in all those cases, police has filed final report and the detenu was aware of those facts. In Ext.P2, the detenu was informed about his right for representation before the Government and before the Advisory Board against his arrest and detention. Therefore, the argument of the counsel for the petitioner regarding the non supply of documents is not helpful for the petitioner and those plea also fails.

10. Another contention advanced by the counsel for the petitioner is that though representation was submitted before the Advisory Board through the 3rd respondent, the Advisory Board has not taken any decision thereon and the detenu was not informed any decision either of the Advisory Board or of the Government. According to the counsel, if there is failure on the part of the Advisory Board or on the part of the Government in taking any decision, the continued detention is illegal and the same will amount to gross violation of the fundamental rights guaranteed by the constitution of India.

11. In reply to the above arguments of the counsel for the petitioner, the learned Government Pleader submitted that the Advisory Board has taken the matter for hearing and the same was disposed of. In support of the above contention of the learned Government Pleader, and for our perusal, he had made available the back files including the proceedings of the Advisory Board. On a perusal of the proceedings of the Advisory Board, it is clear that the Advisory Board has received a written representation of the detenu and the reference on 16-7-2007. Besides the above written representation, a representation dated 13-7-2007 of the petitioner who is the wife of the detenu was also received and the Advisory Board has finally heard the matter on 7-8-2007. On the basis of the pleadings contained therein, the Advisory Board has formulated the questions for consideration as to whether the detenu is a "known rowdy" within the meaning of Section 2(p) of the Ordinance and whether there is need for detaining him in view of the anti social activities alleged against him. After analysing the various provisions contained in the Ordinance and

considering the facts involved in the case, the Advisory Board came into the conclusion that the details furnished are sufficient to hold that the detenu is coming within the definition of "known rowdy". It is also held that the dates of occurrence of the cases in which the detenu involved clearly indicate that the detenu has been involved in unlawful activities during the past few years and noting down that the last incident was occurred on 10-1-2007, the Advisory Board has opined that there is nexus with the order of detention. Thus after an over all consideration of the entire facts, the Advisory Board is unanimous in opinion that there is justification to deal with the detenu under the provisions of the Ordinance and there is substance in the apprehension entertained by the police and the detaining authority that the alleged antisocial activities of the detenu will directly and indirectly create feeling of insecurity in the mind of local people. Thus according to the Advisory Board, there is no illegality in the proceedings of the 2nd respondent. Thus by the proceedings dated 25-8-2007 of the Advisory Board, in

R.C.No.39/2007, the Advisory Board is of opinion that there is sufficient reason to detain the detenu as on 3-7-2007 and there is sufficient reason to continue the detention for the maximum period prescribed in the Ordinance.

12. Then the counsel submitted that even then, the detenu is entitled to get quashed the proceedings and to get released from the jail, since the Government has not passed further confirmation order, in exercise of its powers under section 11(1) of the Ordinance. According to the counsel for the petitioner, the detenu was not informed about any action in the representation filed before the Advisory Board. It is also argued that the Government has not issued any order under section 11(1) of the Ordinance based upon the orders if any issued by the Advisory Board. Pressing into service of various provisions under Article 22 of the Constitution of India, the counsel submitted that if no confirmation order was passed by the Government in exercise of the powers under section 11(1) of the Ordinance, the detenu is entitled to get released forthwith.

13. The above contention is resisted by the Special Government Pleader saying that the Advisory Board has already passed an order in the manner as aforesaid and pursuant to the order passed by the Advisory Board, the Government has issued a separate order confirming the detention of the detenu as per the order of Government i.e., G.O(Rt.)No.2393/2007/Home(SSA)Department dated, Tivandrum, 12-9-2007. Though the above order was not produced along with the counter affidavit, the same was made available to us by producing the back files which we have perused. Thus on a perusal of the said file, it came to our notice that the order of confirmation issued by the Government in exercise of its powers under section 11(1) of the Ordinance has been served on the detenu on 19-9-2007 and for the acknowledgment, the detenu has put his signature as well as thump impression on the copy of the order which was counter signed by the Superintendent, Central Jail, Kannur. Thus we are satisfied that the complaint of the counsel for the petitioner that the Government has not passed

order under section 11(1) of the Ordinance and the same has not been served on the petitioner, has no basis as the records proved otherwise and negate the above contention.

In the light of the above facts and circumstances, we are of the opinion that the above writ petition lacks merits and accordingly, the same is dismissed.

P.R.Raman, Judge.

V.K.Mohanan, Judge.

kvm/-

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: